

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BLUEPEARL VET, LLC, BLUEPEARL
WASHINGTON, LLC AND BLUEPEARL
PRACTICE ENTITY, P.C., JOINT EMPLOYERS
COLLECTIVELY d/b/a BLUEPEARL SPECIALTY
AND EMERGENCY PET HOSPITAL
Employer/Petitioner

and

Case 19-UC-239832

NATIONAL VETERINARY PROFESSIONALS
UNION

Union

ORDER

The Employer's Request for Review of the Regional Director's Decision and Order Clarifying Unit is denied because it raises no substantial issues warranting review.¹ The Employer's request for extraordinary relief is denied as moot.

¹ In denying review, we note that, except with respect to the alleged authority to effectively recommend hiring, the Employer's Request for Review, which has been prepared by its counsel, fails to provide any meaningful supporting explanation for its position that the Blood Bank Director is a supervisor within the meaning of Sec. 2(11) of the Act. As such, the Request for Review fails to comply with the requirement that such a request be a self-contained document enabling the Board to rule on the issues on the basis of its contents. See Sec. 102.67(e) of the Board's Rules and Regulations. Additionally, we find that the Employer's argument that the Blood Bank Director has the authority to effectively recommend hiring fails on the merits, for reasons noted below.

In denying review of the Regional Director's finding that the Employer has not established that the Shift Supervisors effectively recommend reward or promotion by participating in the evaluation process, we additionally note that the Employer did not establish a direct correlation between the "feedback" Shift Supervisors provide for evaluation purposes and annual pay increases. See, e.g., *Elmhurst Extended Care Facilities*, 329 NLRB 535, 537 (1999). Moreover, even if a direct link existed, the Employer has not established that the Shift Supervisors completed evaluations using independent judgment, given the testimony that Shift Supervisors who completed evaluations in the past did so in accordance with the instructions they received from the then-practice manager and the absence of evidence that the Shift Supervisors exercised discretion when applying these instructions. See *Palmetto Prince George Operating, LLC v. NLRB*, 841 F.3d 211, 218–219 (4th Cir. 2016).

In denying review of the Regional Director's finding that the Employer has not established that the Shift Supervisors and Blood Bank Director have the authority to effectively recommend hiring, we additionally note that an assessment of a candidate's technical ability to

JOHN F. RING, CHAIRMAN

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., April 10, 2020.

perform the job does not constitute an effective hiring recommendation. See, e.g., *The Door*, 297 NLRB 601, 601–602 (1990). Likewise, “compatibility recommendations” do not constitute Sec. 2(11) effective hiring recommendations. See *Tree-Free Fiber Co.*, 328 NLRB 389, 391 (1999) (“However, compatibility recommendations by team leaders--or team members--are insufficient to support a finding of hiring authority within the meaning of Section 2(11).”). And although *Sheraton Universal Hotel*, 350 NLRB 1114, 1118 (2007), illustrates that, at least with respect to recommendations against hiring, recommendations may be effective even when a higher-level supervisor also interviews applicants, in that case the putative supervisor’s recommendations against hire were effective because such a recommendation would be “fatal” to the candidate in question. There is no evidence that the recommendations of the Blood Bank Director or the Shift Supervisors carry comparable weight.

In denying review of the Regional Director’s determination that the Employer has not established that the Shift Supervisors effectively recommend discipline within the meaning of Sec. 2(11), we additionally note that the Employer has not established that the Shift Supervisors use independent judgment with respect to any disciplinary actions they may make. Further, the Employer has not demonstrated that it follows a progressive disciplinary policy; absent such a policy, express recommendations of discipline are effective only in the absence of higher management’s independent investigation or review, and as the Regional Director found there is no indication that a Shift Supervisor’s disciplinary recommendation has been accepted without independent investigation. We note, however, that we would be open to reconsidering extant Board law on effective recommendation of discipline in a future appropriate case.

Finally, Shift Supervisor Futran’s additional scheduling duties, we note that her performance of those duties does not require independent judgment because she merely applies the scheduling rules that she learned from another employee. See *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006). Her role in approving leave requests is a secondary indicium of supervisory status. See, e.g., *Pacific Coast M.S. Industries*, 355 NLRB 1422, 1423 fn. 12 (2010).